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6 Attorney for Plaintiff,  
7 DEX Systems, Inc.

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9  
10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12

13 DEX SYSTEMS INC.,  
14 a California corporation,

15 Plaintiff,

16 vs.

17 DEUTSCHE POST AG,  
18 a Foreign corporation,  
19 DEUTSCHE POST INTERNATIONAL B.V.,  
20 a Foreign corporation,  
21 DHL SUPPLY CHAIN NETHERLANDS  
22 B.V., a Foreign corporation,  
23 and DOES 1-20,

24 Defendants.  
25 -----  
26

Case No.: 2:15-cv-03841-JAK-RAO

**PLAINTIFF DEX SYSTEMS’  
APPENDIX (PART 2) OF EXHIBITS  
FILED IN SUPPORT OF ITS  
MEMORANDUM IN OPPOSITION TO  
DEFENDANT DHL SUPPLY CHAIN  
(NETHERLANDS) B.V.’S MOTION TO  
DISMISS FOR FORUM NON CON  
CONVENIENS AND MOTION FOR  
JUDGMENT ON THE PLEADINGS**

Date: May 13, 2019

Time: 8:30 a.m.

Crtrm.: 10B

Judge: Hon. John A. Kronstadt

27 **PLAINTIFF DEX SYSTEMS’ EXHIBITS FILES IN SUPPORT OF ITS MEMORANDUM IN OPPOSITION**  
28 **TO DEFENDANT DHL SUPPLY CHAIN (NETHERLANDS) B.V.’S MOTION TO DISMISS**

**APPENDIX**

**DECLARATIONS**

1. Leonard Schneeman

2. Alan Kheel

**EXHIBITS**

A: Network Access Agreement

B: Non Disclosure Agreement

C: Intel SOW and Agreement

D: Letter of Intent between DEX SUPPLY CHAIN SERVICES COOPERATIE U.A.  
and DHL WORLDWIDE EXPRESS LOGISTICS NV

E: EMAIL from Ruud de Groot to Stuart Young

1 By: s/ C. Stuart Young  
2 C. Stuart Young  
3 Attorney for Defendant,  
4 DEX Systems, Inc.  
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27 **PLAINTIFF DEX SYSTEMS' MEMORANDUM IN OPPOSITION TO DEFENDANT DHL SUPPLY CHAIN**  
28 **(NETHERLANDS) B.V.'S MOTION TO DISMISS**

**PROOF OF SERVICE**

STATE OF CALIFORNIA )

COUNTY OF VENTURA )

I am over the age of eighteen and not a party to the within action. My business address is 3600 Via Pescador, Camarilla CA 93012

On March 26, 2019, I served the foregoing document(s) described as: Plaintiff' Appendix of Exhibits upon

Anthony White, Thompson Hine LLP, 41 S. High St. Suite 1700, Columbus Ohio 43215;

John Conkle 3130 Wilshire Boulevard Suite 500 Santa Monica CA 90403-2351

XX (ELECTRONIC MAIL) Service by electronic mail. I caused a true copy of the foregoing document to be sent via electronic mail in pdf. format to the individuals listed above.

XX (BY U. S. MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business

XX (BY CM/ECF NOTICE OF ELECTRONI FILING : I caused said documents to be served by means of this Court's electronic transmission of the Notice of Electronic Filing through the Court's transmission facilities to the parties and/or counsel who are registered CM/ECF Users set forth in the service list obtained from this Court.

(BY OVERNIGHT MAIL) I caused said envelope(s) to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee(s).

XX (STATE) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

(FEDERAL) I declare that I am a member of the bar of this Court.

Executed on March 26, 2019, at Camarillo, California.

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C. Stuart Young



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**PLAINTIFF DEX SYSTEMS' MEMORANDUM IN OPPOSITION TO DEFENDANT DHL SUPPLY CHAIN  
(NETHERLANDS) B.V.'S MOTION TO DISMISS**

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## Export Services

The Export Services will include the following elements:

Where Product is to be shipped within Belgium, management of the shipping process, including:

- pick up of Product from designated collection Site;
- arrangement of road transportation;
- delivery of Product to destination Site.

Where Product is to be shipped outside Belgium, management of the export process, including:

- appointment of an agent;
- pick up of Product from designated collection Site;
- clearance through customs and security;
- arrangement of air or road transportation;
- clearance through customs at destination end and customs services will be charged at extra services;

**delivery of Product to destination Site.**

DHL-BELGIUM will also provide corresponding return Services.

Requests for Export Services movements will normally be generated automatically on Day 0, but provision will be made for exceptional manual ad hoc Requests. Manual Requests must be submitted by 15:30 on Day 0.

## **TRANSPORTATION SERVICE LEVELS**

### **Introduction**

This Exhibit 2 (Service Levels) sets out:

- the Services for which the Parties have agreed to measure performance;
- the Measurement Period and the metrics for measurement of performance of each the measured Services;
- the Target Service Level success criteria or thresholds against which the performance is to be measured in each case; and
- the data to be included and the method of calculation of the Actual Service Level.

DEX may request from time to time that Service Levels for other Services be included in reporting.

## **TRANSPORT SERVICES**

### **General**

The Measurement Period for Actual Service Levels will be calendar monthly.

### **NBD Delivery and Collections**

The Target Service Levels for the NBD Delivery and Collections Service are as follows. DHL-BELGIUM shall:

For 95% of Requests meet the collection and delivery timings set out in Exhibit 2 for these Services. Meeting the collection and delivery timings shall mean that the Service shall be completed within 15 minutes of its scheduled completion time.

### **Overnight Pallets**

The Target Service Levels for the Overnight Pallets Service are as follows. DHL-BELGIUM shall:

For 95% of Requests meet the collection and delivery timings set out in Schedule 1 for this Service.

### **Stock Replenishment**

The Target Service Levels for the Stock Replenishment Service are as follows. The DHL-BELGIUM shall:

For 98% of Collection Services Requests, collect the Product from Customer Site and deliver the Product to the Screening Centre no later than 17:30 on Day 4 following placing of the Request.

#### Same Day

The Target Service Levels for the Same Day Services are as follows. The DHL-BELGIUM shall:  
For 98% of Requests meet the collection and delivery timings set out in Exhibit 2 for this Service.

for 98% of Requests, provide POD data within 10 minutes of delivery; OH: 98% within 1 hour, 100% by 12:00 am next working day.<sup>3</sup>

for 98%<sup>4</sup> of Requests where deliveries are delayed, communicate any delays to original ETA at least 20 minutes prior to original delivery time and at the same time provide a new ETA and any corrective actions applicable.

#### EXPORT SERVICES

##### General

The Measurement Period for Actual Service Levels will be calendar monthly.

##### Export Service

The Target Service Levels for the Export Service are as follows. The DHL-BELGIUM shall:

For 95% of Requests meet the collection and delivery timings set out in Exhibit 2 for this Service.

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<sup>3</sup> POD updates during OOH: 98% within 1 hour from opening of the ELC/FSL/SPC next working day, 100% by 12:00 am next working day.

<sup>4</sup> On time delivery is considered against final ETA. Even if this falls outside the 2/4 hour window.



## **TRANSPORTATION SERVICES REMEDIATION**

There are no Service Credits defined for the Transport and Export. However DHL-BELGIUM will remediate Service Failures as follows:

In the event of failure to meet the Service timings for a Request under the NBD Collections and Delivery Service, DHL-BELGIUM will effect the collection and/or delivery no later than next Business Day, and make no additional charge over the original service charge for the collection and/or delivery.

In the event of failure to meet an ETA for a Timed Delivery, DHL-BELGIUM will effect the collection and/or delivery no later than one hour from the original ETA, and make no additional charge over the original service charge for the collection and/or delivery.

In the event of failure to meet ETA for a Same Day Service, DHL-BELGIUM will effect the delivery no later than 1 hour from original ETA, and make no additional charge over the original service charge for the delivery.

In the event of consistent failure to meet the Target Service Level for any of the Services, an emergency review meeting will be held following which DHL-BELGIUM will present a remediation plan to DEX within 5 Business Days, and following amendment (if any) and approval of such plan by DEX, DHL-BELGIUM will execute the plan (as amended) at no cost to DEX.

**TRANSPORTATION SERVICES PRICING AND INVOICING**

Charges payable by DEX to DHL-BELGIUM in respect of the Services and the invoicing and payment terms are exclusive of VAT.

Invoices for Services rendered shall be generated on the 15th calendar day of the month following the invoice period in which the service is actually provided. Payment shall be made at 30 days net from the date of invoice

All parking fines or other fines for road traffic offences incurred by DHL-BELGIUM are to the account of DHL-BELGIUM.

**TRANSPORT SERVICES PRICING****General**

*Charges for all pallet-based Services will be per pallet.*

**NBD Delivery and Collections**

Charges for the NBD Delivery and Collections Service are as set out in the table below.

<b>NBD Delivery and Collections Service Charges</b>		
<b>Service</b>	<b>Unit Price</b>	<b>Comments</b>
Next Business Day		
Next Business day Delivery or Collection	€10.77	See Exhibit 4 for full rate card
Next Business Day Delivery – AM	€11.32	See Exhibit 4 for full rate card
Next Business Day Delivery – Pre 9 AM	€16.16	See Exhibit 4 for full rate card average 5 kgs
Next Business Day Delivery/48hr Collection		
Same Business Day		
Same Day Delivery by Dedicated Courier	€33,75	OH Minimum Charge
	€0,88	OH KM (per driven km)
	€33,75	OOH Minimum Charge
	€1,14	OOH KM (per driven km)
SD Delivery by Dedicated Courier (minivan)	€46,25	OH Minimum Charge
	€1,10	OH KM (per driven km)
	€45,00	OOH Minimum Charge
	€1,19	OOH KM (per driven km)
SD Delivery by Dedicated Courier (van)	€87,50	OH Minimum Charge
	€1,50	OH KM (per driven km)
	€87,50	OOH Minimum Charge



	€1,50	OOH KM (per driven km)
Supplementary Charges - Note 1 <sup>5</sup>	Cost plus 10%	Additional costs incurred by courier
Same day Transit Van Delivery per kilometer	€0.44	For round trips.(€ .88 per kilometre for one way)
Fixed Intercompany daily routing (milk run) of 250km with a mini van	€137,50	5 stops
Additional stop (milk run)	€8,25	Per stop
Waiting time (first 15min incl) - labor charge	€33.87	Per hour

#### EXPORT SERVICES PRICING

*Charges for the Export Services will be in accordance with the following rate card, see Exhibit 4 :*

Rates shown are inclusive of all handling and processing Charges.

DHL-BELGIUM shall select the most cost effective Export Service type from the above rate card (Air Express NBD, Air Express Pre-9, Air Express Pre-12 or euro Road) having regard to the following considerations:

1. Any Service Level required to be met;
2. The nature of the consignment (size, weight, value, whether dutiable or not);
3. The destination (inside or outside the EU or EEA).
4. Where no other consideration prevails, DHL-BELGIUM shall use the lowest cost-Export Service.

For the avoidance of doubt the delivery times stated are exclusive of the transit time ("TT") stated for each destination country. For example, Air Express NBD with a transit time of 2 days means that for a Request placed on Day 0, Product will be in transit on Day 1 and Day 2, will be delivered by close of business on Day 3.

<sup>5</sup> Supplementary charges may be incurred for tolls, waiting time, ferries, second drivers, hotel accommodation etc. In such cases, the fees will be paid initially by DHL, and recharged at to DEX.



### **EXHIBIT 3—DEX SYSTEMS USAGE AND PRICING**

DEX and DHL-BELGIUM desire to enter into an agreement where DHL-BELGIUM shall provide to DEX warehousing, transportation and logistics services. Pursuant thereto, DEX requires DHL-BELGIUM to use DEX intellectual property, specifically the DEX Systems, in the performance of the services by DHL-BELGIUM to DEX.

In order to make use of the DEX Systems in the performance of the services contemplated here-in, DHL-BELGIUM shall execute the attached Software License and Professional Services Agreement

#### **DEX Systems Transaction Fee**

This fee covers the transactional licensing for the DEX Systems logistics modules including Returns, Repair & Recycle, and Fulfillment. The fees are billed to DHL-BELGIUM on a per transaction basis for every Product entered into the system, and every subsequent shipment of Product regardless of the following disposition stream. These fees are billed in Euros, consolidated, and invoiced weekly. Each receipt of an individual Product and subsequent shipment of a Product from the DHL-BELGIUM facility is considered a transaction and a Product is defined as any single uniquely identified part that will be tracked and / or processed. It is important to note that any initial seed stock inventory or backlog entered into the system prior to 'go-live' will incur this fee.

Transactional fees occur for any 'receipt' or 'shipment' event that occurs within the DHL Global Instance of the DEX Systems software.

DHL shall be charged a per transaction charge of €0.44 for usage of the DEX System on a transactional basis as set forth in Exhibit 1 above. DHL will invoice DEX hereunder for the Systems Transactional fees, and such fees shall be due from DEX to DHL in the same accounting period in which they were due from DHL to DEX under the Software License and Professional Services Agreement.

DHL-BELGIUM will report on a monthly basis all systems transactions on a per customer and per location basis:

Stand-alone solutions are independent and costs as such. Existing stand-alone solutions can be transitioned to the Global Instance for which the transactions will be applicable to the minimum and / or transactional fees.

#### **Customer System of Record – Liability**

DHL-BELGIUM is responsible for the reliability of the inventory registered in the DEX IT System ("System") as long as the access to the DEX IT System is by means of access codes or keys used exclusively by DHL-BELGIUM within project scope. These access codes or keys enable DHL-BELGIUM's personnel to trace the transactions in the IT System. For this purpose DHL-BELGIUM's personnel must have user access to the DEX IT System, protected by password. This user access must be exclusive to DHL-BELGIUM nominated personnel. Any transaction attributed in the DEX IT System by the personnel of DEX, affecting the object of the service, must be communicated to DHL-BELGIUM in writing. If this described procedure is not observed, DHL-BELGIUM shall not be responsible for differences or discrepancies of inventory.

In addition, if any DEX person should access inventory data within the System without prior written approval by DHL-BELGIUM, and such access effects any of the agreed KPI's, then DHL-BELGIUM shall not be accountable for that specific inventory action/KPI, and the KPI shall be adjusted accordingly.

If there is any disagreement with respect to the above, DEX must provide an audit report for all inventory moves within the relevant warehouses, and the assigned user will be identified and liability identified.

DEX will provide DHL-BELGIUM with a daily transaction report and any other relevant report to allow the invoicing of DHL-BELGIUM activities.

DEX will inform DHL-BELGIUM of any proposed changes to enable impact analysis to be carried out. If System changes occur, without prior notification and assessment by DHL-BELGIUM, DHL-BELGIUM shall not be liable if such changes affect the processes, deliverables or inventory integrity.

In the event of any issues with the DEX System, users are requested to follow the standard IT ticket process. In the event of system outage, the standard agreed DRP process will be implemented and followed.



**EXHIBIT 4: Transportation rate card and Zone overview**

<b>DHL EXPRESS 9:00</b>											
<b>Documents up to 4,6 Kgs (Prices in EUR)</b>											
Kgs	0	1	2	3	4	5	6	7	8	9	10
0,5	12,71	12,74	13,83	15,59	18,74	25,65	20,72	22,43	25,26	23,81	27,81
1	14,15	14,45	18,58	21,19	27,80	38,99	29,95	35,02	38,84	35,17	43,10
1,5	14,42	14,90	17,63	23,16	30,11	44,18	32,46	37,77	42,08	40,02	47,65
2	14,89	15,35	18,68	25,13	32,42	49,40	34,97	40,52	47,32	44,87	52,20
2,5	14,96	15,60	19,73	27,10	34,73	54,62	37,48	43,27	52,58	49,72	56,75
3	15,20	16,45	20,75	29,70	37,75	59,99	40,44	46,68	57,69	54,60	63,37
3,5	15,44	17,10	21,77	32,30	40,77	65,36	43,40	50,09	62,82	59,48	69,59
4	15,88	17,75	22,79	34,90	43,79	70,73	46,36	53,50	67,95	64,36	76,61
4,5	15,92	18,40	23,81	37,50	46,81	76,10	49,32	56,91	73,08	69,24	83,23
<b>DHL EXPRESS 9:00</b>											
<b>Non-Documents and Documents from 5 Kgs</b>											
Kgs	0	1	2	3	4	5	6	7	8	9	10
0,5	12,71	12,74	13,83	15,59	18,74	25,65	26,81	29,30	31,01	29,45	33,83
1	14,15	14,45	16,58	21,19	27,80	38,99	36,04	41,89	42,59	40,81	48,12
1,5	14,42	14,90	17,63	23,16	30,11	44,18	36,55	44,64	47,63	45,66	53,67
2	14,89	15,35	18,68	25,13	32,42	49,40	41,06	47,39	53,07	50,51	53,22
2,5	14,96	15,60	19,73	27,10	34,73	54,62	43,57	50,14	58,31	55,38	62,77
3	15,20	16,45	20,75	29,70	37,75	59,99	46,53	53,56	63,44	60,24	69,39
3,5	15,44	17,10	21,77	32,30	40,77	65,36	49,49	56,96	68,57	65,12	76,01
4	15,88	17,75	22,79	34,90	43,79	70,73	52,45	60,37	73,70	70,00	82,63
4,5	15,92	18,40	23,81	37,50	46,81	76,10	55,41	63,78	78,83	74,88	89,25
5	16,16	19,03	24,62	40,04	49,74	81,32	58,44	67,19	83,84	79,62	95,99
5,5	16,37	19,44	25,69	41,57	51,51	84,67	60,47	69,70	87,24	82,92	99,28
6	16,58	19,65	26,56	43,10	53,28	88,62	62,50	72,21	90,84	86,22	102,57
6,5	16,79	20,26	27,43	44,63	55,05	92,27	64,53	74,72	94,34	89,52	105,86
7	17,00	20,87	28,30	46,16	56,82	95,92	66,56	77,23	97,84	92,82	109,15
7,5	17,21	21,08	29,17	47,69	58,59	99,57	68,59	79,74	101,34	96,12	112,44
8	17,42	21,49	30,04	49,22	60,36	103,22	70,62	82,25	104,84	99,42	115,73
8,5	17,63	21,90	30,91	50,75	62,13	106,87	72,65	84,76	108,34	102,72	119,02
9	17,84	22,31	31,78	52,28	63,90	110,52	74,68	87,27	111,84	105,02	122,31
9,5	18,05	22,72	32,65	53,81	65,67	114,17	76,71	89,78	115,34	109,32	125,60
10	18,26	23,13	33,52	55,34	67,44	117,82	78,74	92,29	118,84	112,62	128,89
11	18,74	23,77	35,00	57,72	70,72	124,22	82,64	96,41	124,90	118,78	135,27
12	19,22	24,41	36,48	60,10	74,00	130,62	86,54	100,53	130,96	124,94	141,65
13	19,70	25,05	37,96	62,48	77,28	137,02	90,44	104,65	137,02	131,10	148,03
14	20,18	25,69	39,44	64,86	80,56	143,42	94,34	108,77	143,08	137,26	154,41
15	20,66	26,33	40,92	67,24	83,84	149,82	98,24	112,89	149,14	143,42	160,79
16	21,14	26,97	42,40	69,62	87,12	156,22	102,14	117,01	155,20	149,58	167,17
17	21,62	27,61	43,88	72,00	90,40	162,62	106,04	121,13	161,26	155,74	173,55
18	22,10	28,25	45,36	74,38	93,68	169,02	109,94	125,25	167,32	161,90	180,73
19	22,58	28,89	46,84	76,76	96,96	175,42	113,84	129,37	173,38	168,06	187,21
20	23,06	29,53	48,32	79,14	100,22	181,82	117,74	133,49	179,44	174,22	193,69
21	23,54	30,17	49,80	81,52	103,50	188,20	121,62	137,61	185,50	181,10	200,17
22	24,02	30,81	51,28	84,02	106,78	194,58	125,50	142,13	192,66	187,98	206,65
23	24,50	31,45	52,76	86,46	110,06	201,00	129,38	146,45	200,80	194,86	213,13
24	24,98	32,09	54,24	88,90	113,34	207,42	133,26	150,77	207,92	201,74	219,61
25	25,46	32,73	55,72	91,34	116,62	213,84	137,14	155,09	215,04	208,62	226,09
26	25,94	33,37	57,20	93,78	119,90	220,26	141,02	159,41	222,16	215,50	232,57
27	26,42	34,01	58,68	96,22	123,18	226,68	144,90	163,73	229,28	222,38	239,05
28	26,90	34,65	60,16	98,66	126,46	233,10	148,78	168,05	236,40	229,28	245,53
29	27,38	35,29	61,64	101,10	129,74	239,52	152,66	172,37	243,52	236,14	252,01
30	27,86	35,93	63,12	103,54	133,02	246,00	156,54	176,69	250,64	243,02	258,49
35	30,26	39,43	71,12	116,14	149,52	285,12	179,44	199,09	286,34	278,32	313,29
40	32,66	42,93	79,12	128,74	166,02	318,62	200,34	221,49	322,04	313,62	354,69
45	35,06	46,43	87,12	141,34	182,52	354,12	221,24	243,88	357,74	348,92	396,49
50	37,46	49,93	95,12	153,94	199,02	388,62	242,14	266,29	393,44	384,22	438,09
55	39,86	54,13	104,62	173,14	219,42	427,62	266,64	293,59	430,94	424,72	488,09
60	42,26	58,33	114,12	192,34	239,82	466,62	291,14	320,89	468,44	465,22	538,09
65	44,66	62,53	123,62	211,54	260,22	505,62	315,64	348,19	505,94	505,72	588,09
70	47,06	66,73	133,12	230,74	280,62	544,62	340,14	375,49	543,44	548,22	638,09
80	51,86	75,13	152,12	269,14	321,42	622,62	389,14	430,09	618,44	627,22	738,09
90	56,66	83,53	171,12	307,54	362,22	700,62	438,14	484,89	693,44	708,22	838,09
100	61,46	91,93	190,12	345,94	403,02	778,62	487,14	539,29	768,44	789,22	938,09
<b>Prices are charged by 0,5 kgs according to following adders (per additional 0,5 kg)</b>											
10-20 kg	0,24	0,32	0,74	1,19	1,62	3,20	1,95	2,08	3,03	3,08	3,24
20-30 kg	0,24	0,32	0,74	1,22	1,64	3,44	2,04	2,16	3,56	3,44	3,90
30-50 kg	0,24	0,38	0,80	1,26	1,65	3,45	2,09	2,24	3,57	3,53	4,16
50-100 kg	0,24	0,42	0,95	1,92	2,04	3,90	2,45	2,73	3,75	4,05	5,00
> 100 kg	0,25	0,42	0,95	1,92	2,04	3,90	2,45	2,73	3,75	4,05	5,00

The tariff also depends on the volume of your shipment. If you send a package which is low in weight but high in volume, the volumetric weight may exceed the real weight. In that case take the volumetric weight as reference weight.

For the exact calculation of your volumetric weight in kg please check our website: [www.dhl.be](http://www.dhl.be).

Do you have a shipment heavier than 250 kg? Or a shipment with one of the dimensions exceeding 118cm x 88cm x 120cm? Please contact your Sales Representative or our Customer Service (02/715.50.50) for an offer and tailor made service.

All prices are in euro and exclude the fuel surcharge, remote area surcharge and other surcharges.



DHL EXPRESS 12:00											
Documents up to 4,5 Kgs (Prices in EUR)											
Kgs	0	1	2	3	4	5	6	7	8	9	10
0,5	8,89	8,91	9,68	10,91	13,11	17,96	14,50	15,70	17,68	16,68	19,47
1	9,90	10,11	11,80	14,83	19,45	27,27	20,98	24,51	25,79	24,61	30,17
1,5	10,09	10,43	12,34	16,21	21,07	30,92	22,71	26,43	29,45	28,00	33,35
2	10,28	10,75	13,08	17,59	22,69	34,57	24,46	28,35	33,11	31,39	38,53
2,5	10,47	11,07	13,82	18,97	24,31	38,22	26,21	30,27	36,77	34,78	42,04
3	10,64	11,52	14,53	20,79	28,42	41,98	28,26	32,85	40,36	38,19	46,87
3,5	10,81	11,97	15,24	22,61	28,53	45,74	30,35	35,03	43,95	41,60	50,79
4	10,98	12,42	15,95	24,43	30,64	49,50	32,42	37,41	47,54	45,01	55,60
4,5	11,15	12,87	16,68	26,25	32,75	53,28	34,49	39,79	51,13	48,42	59,83
DHL EXPRESS 12:00											
Non-Documents and Documents from 5 Kgs											
Kgs	0	1	2	3	4	5	6	7	8	9	10
0,5	8,89	8,91	9,68	10,91	13,11	17,96	18,76	20,51	21,70	20,61	23,68
1	9,90	10,11	11,80	14,83	19,45	27,27	25,22	29,32	29,61	28,58	34,38
1,5	10,09	10,43	12,34	16,21	21,07	30,92	26,97	34,24	33,47	31,95	37,56
2	10,28	10,75	13,08	17,59	22,69	34,57	28,72	37,16	37,13	35,34	42,74
2,5	10,47	11,07	13,82	18,97	24,31	38,22	30,47	39,08	40,79	38,73	46,82
3	10,64	11,52	14,53	20,79	28,42	41,98	32,54	41,46	44,38	42,14	50,50
3,5	10,81	11,97	15,24	22,61	28,53	45,74	34,61	43,84	47,97	45,55	54,18
4	10,98	12,42	15,95	24,43	30,64	49,50	36,68	46,22	51,56	48,96	58,14
4,5	11,15	12,87	16,68	26,25	32,75	53,28	38,75	48,60	55,15	52,37	62,44
5	11,32	13,31	17,38	28,02	34,80	56,91	40,87	50,98	58,66	55,69	66,15
5,5	11,47	13,59	17,97	29,09	36,04	59,46	42,29	52,73	61,11	58,00	69,45
6	11,62	13,87	18,56	30,16	37,28	62,01	43,71	54,48	63,56	60,31	71,75
6,5	11,77	14,15	19,19	31,23	38,52	64,58	45,13	56,23	66,01	62,62	74,05
7	11,92	14,43	19,80	32,30	39,76	67,11	46,55	58,08	68,48	64,93	76,35
7,5	12,07	14,71	20,41	33,37	41,00	69,66	47,97	59,93	70,91	67,24	78,65
8	12,22	14,99	21,02	34,44	42,24	72,21	49,39	61,78	73,36	69,55	80,95
8,5	12,37	15,27	21,63	35,51	43,48	74,78	50,81	63,63	75,81	71,86	83,25
9	12,52	15,55	22,24	36,58	44,72	77,21	52,23	65,48	78,26	74,17	85,55
9,5	12,67	15,83	22,85	37,65	45,96	79,66	53,65	67,33	80,71	76,48	87,85
10	12,82	16,11	23,46	38,72	47,20	82,11	55,07	69,18	83,16	78,79	90,15
11	13,16	16,55	24,46	40,38	49,48	86,89	57,81	71,38	85,40	80,95	92,45
12	13,50	16,99	25,50	42,04	51,76	91,37	60,55	73,63	87,64	83,19	94,75
13	13,84	17,43	26,52	43,70	54,04	95,85	63,29	75,88	89,89	85,43	97,05
14	14,18	17,87	27,54	45,36	56,32	100,33	66,03	78,13	92,14	87,67	99,35
15	14,52	18,31	28,56	47,02	58,60	104,81	68,77	80,38	94,39	89,91	101,65
16	14,86	18,75	29,58	48,68	60,88	109,29	71,51	82,63	96,64	92,15	103,95
17	15,20	19,19	30,60	50,34	63,16	113,77	74,25	84,88	98,89	94,39	106,25
18	15,54	19,63	31,62	52,00	65,44	118,25	76,99	87,13	101,14	96,63	108,55
19	15,88	20,07	32,64	53,66	67,72	122,73	79,73	89,38	103,39	98,87	110,85
20	16,22	20,51	33,66	55,32	69,99	127,21	82,47	91,63	105,64	101,11	113,15
21	16,56	20,95	34,68	57,02	72,27	132,01	85,21	93,88	107,89	103,35	115,45
22	16,90	21,39	35,70	58,72	74,55	136,81	87,95	96,13	110,14	105,59	117,75
23	17,24	21,83	36,72	60,42	76,83	141,61	90,69	98,38	112,39	107,83	120,05
24	17,58	22,27	37,74	62,12	79,11	146,41	93,43	100,63	114,64	110,07	122,35
25	17,92	22,71	38,76	63,82	81,39	151,21	96,17	102,88	116,89	112,31	124,65
26	18,26	23,15	39,78	65,52	83,67	156,01	98,91	105,13	119,14	114,55	126,95
27	18,60	23,59	40,80	67,22	85,95	160,81	101,65	107,38	121,39	116,79	129,25
28	18,94	24,03	41,82	68,92	88,23	165,61	104,39	109,63	123,64	119,03	131,55
29	19,28	24,47	42,84	70,62	90,51	170,41	107,13	111,88	125,89	121,27	133,85
30	19,62	24,91	43,86	72,32	92,79	175,21	109,87	114,13	128,14	123,51	136,15
35	21,32	27,31	49,46	81,12	104,39	199,41	125,87	130,06	140,99	137,39	150,85
40	23,02	29,71	55,06	89,92	115,99	223,61	140,27	154,88	165,79	151,17	165,55
45	24,72	32,11	60,66	98,72	127,59	247,81	154,87	170,28	180,68	165,55	180,25
50	26,42	34,51	66,26	107,52	139,19	272,01	169,47	185,63	195,57	180,33	194,95
55	28,12	37,41	72,86	120,92	153,49	296,31	188,57	204,98	210,46	195,03	209,65
60	29,82	40,31	79,46	134,32	167,79	320,51	203,67	224,08	230,36	210,11	224,35
65	31,52	43,21	86,08	147,72	182,09	344,71	220,77	243,18	250,64	225,19	239,05
70	33,22	46,11	92,68	161,12	196,39	368,91	237,87	262,28	269,92	240,07	253,75
80	36,62	51,91	105,86	187,92	224,99	435,81	272,07	300,48	313,16	274,79	288,45
90	40,02	57,71	119,08	214,72	253,59	490,41	308,27	338,68	351,36	300,07	313,15
100	43,42	63,51	132,26	241,52	282,19	545,01	340,47	376,88	384,56	325,27	337,85
Prices are charged by 0,5 kgs according to following adders (per additional 0,5 kg)											
10-20 kg	0,17	0,22	0,51	0,83	1,13	2,24	1,37	1,44	2,12	2,15	4,18
20-30 kg	0,17	0,22	0,51	0,85	1,14	2,40	1,43	1,51	2,49	2,40	4,11
30-50 kg	0,17	0,24	0,58	0,88	1,16	2,42	1,48	1,56	2,50	2,47	4,22
50-100 kg	0,17	0,29	0,66	1,24	1,43	2,73	1,71	1,91	2,83	2,84	5,95
> 100 kg	0,24	0,29	0,68	1,34	1,43	2,73	1,71	1,91	2,83	2,84	5,95

The tariff also depends on the volume of your shipment. If you send a package which is low in weight but high in volume, the volumetric weight may exceed the real weight. In that case take the volumetric weight as reference weight.

For the exact calculation of your volumetric weight in kg please check our website: [www.dhl.be](http://www.dhl.be).

Do you have a shipment heavier than 250 kg? Or a shipment with one of the dimensions exceeding 118cm x 88cm x 120cm? Please contact your Sales Representative or our Customer Service (02/715.50.50) for an offer and tailor made service.

All prices are in euro and exclude the fuel surcharge, remote area surcharge and other surcharges.



**DHL EXPRESS WORLDWIDE**

Documents up to 4,5 Kgs (Prices in EUR)

Kgs	0	1	2	3	4	5	6	7	8	9	10	11
0,5	8,47	8,49	9,22	10,39	12,49	17,10	13,81	14,85	16,84	15,87	18,54	24,93
1	9,42	9,83	11,05	14,12	16,53	25,97	19,98	23,34	24,58	23,44	28,73	29,06
1,5	9,61	9,93	11,75	15,43	20,07	29,45	21,63	25,17	28,05	28,87	31,76	44,31
2	9,79	10,23	12,45	16,74	21,81	32,93	23,20	27,00	31,54	29,90	34,79	49,56
2,5	9,97	10,53	13,15	18,05	23,15	36,41	24,97	28,83	35,03	33,13	37,82	54,81
3	10,13	10,86	13,83	19,78	25,16	39,99	26,94	31,10	38,45	36,38	42,23	61,78
3,5	10,29	11,38	14,51	21,51	27,17	43,57	28,91	33,27	41,87	39,63	46,84	68,75
4	10,45	11,82	15,19	23,24	29,16	47,15	30,88	35,84	45,29	42,88	51,05	75,72
4,5	10,61	12,25	15,87	24,97	31,18	50,73	32,85	37,91	48,71	46,13	55,46	82,69

**DHL EXPRESS WORLDWIDE**

Non-Documents and Documents from 5 Kgs

Kgs	0	1	2	3	4	5	6	7	8	9	10	11
0,5	8,47	8,49	9,22	10,39	12,49	17,10	17,87	19,63	20,67	19,63	22,65	29,34
1	9,42	9,83	11,05	14,12	16,53	25,97	24,02	27,92	28,39	27,20	32,74	43,47
1,5	9,61	9,93	11,75	15,43	20,07	29,45	25,69	29,75	31,88	30,43	35,77	48,72
2	9,79	10,23	12,45	16,74	21,81	32,93	27,38	31,58	35,37	33,68	38,80	53,97
2,5	9,97	10,53	13,15	18,05	23,15	36,41	29,03	33,41	38,66	36,89	41,83	58,22
3	10,13	10,86	13,83	19,78	25,16	39,99	31,00	35,88	42,28	40,14	46,24	65,19
3,5	10,29	11,38	14,51	21,51	27,17	43,57	32,97	37,95	45,70	43,39	50,85	73,16
4	10,45	11,82	15,19	23,24	29,16	47,15	34,94	40,22	49,12	46,84	55,06	80,12
4,5	10,61	12,25	15,87	24,97	31,18	50,73	36,91	42,49	52,54	49,89	59,47	87,10
5	10,77	12,67	16,64	26,86	33,14	54,21	38,93	44,78	55,88	53,05	63,96	94,40
5,5	10,91	12,94	17,12	27,68	34,32	58,84	40,28	46,43	58,21	55,25	66,15	99,41
6	11,05	13,21	17,70	28,70	35,50	59,07	41,63	48,10	60,54	57,45	68,34	104,42
6,5	11,19	13,48	18,28	29,72	36,68	61,50	42,98	49,77	62,67	59,85	70,53	109,43
7	11,33	13,75	18,86	30,74	37,86	63,93	44,33	51,44	65,20	61,85	72,72	114,44
7,5	11,47	14,02	19,44	31,78	39,04	66,38	45,68	53,11	67,52	64,05	74,91	119,45
8	11,61	14,29	20,02	32,78	40,22	68,79	47,03	54,78	69,85	66,25	77,10	124,46
8,5	11,75	14,58	20,60	33,80	41,40	71,22	48,38	56,45	72,19	68,45	79,29	129,47
9	11,89	14,83	21,18	34,82	42,58	73,65	49,73	58,12	74,52	70,65	81,48	134,48
9,5	12,03	15,10	21,76	35,84	43,76	76,08	51,08	59,79	76,85	72,85	83,67	139,49
10	12,17	15,37	22,34	36,86	44,94	78,51	52,43	61,46	79,18	75,06	85,86	144,50
11	12,49	15,79	23,32	38,44	47,12	82,77	55,03	64,20	83,22	79,15	90,18	152,46
12	12,61	16,21	24,30	40,02	49,30	87,03	57,63	66,94	87,26	83,25	94,50	160,42
13	13,13	16,63	25,28	41,60	51,48	91,29	60,23	69,68	91,30	87,35	98,82	168,38
14	13,45	17,05	26,26	43,18	53,66	95,55	62,83	72,42	95,34	91,45	103,14	176,34
15	13,77	17,47	27,24	44,76	55,84	99,81	65,43	75,16	99,38	95,55	107,46	184,30
16	14,09	17,89	28,22	46,34	58,02	104,07	68,03	77,90	103,42	99,65	111,78	192,28
17	14,41	18,31	29,20	47,92	60,20	108,33	70,63	80,64	107,46	103,75	116,10	200,22
18	14,73	18,73	30,18	49,50	62,38	112,59	73,23	83,38	111,50	107,85	120,42	208,18
19	15,05	19,15	31,16	51,08	64,56	116,85	75,83	86,12	115,54	111,95	124,74	216,14
20	15,37	19,57	32,14	52,66	66,73	121,11	78,43	88,88	119,58	118,05	129,08	224,10
21	15,69	19,99	33,12	54,28	68,91	125,69	81,15	91,74	124,32	120,83	134,26	231,92
22	16,01	20,41	34,10	55,90	71,09	130,27	83,87	94,82	129,08	125,21	139,48	239,74
23	16,33	20,83	35,08	57,52	73,27	134,85	86,59	97,50	133,80	129,79	144,65	247,56
24	16,65	21,25	36,06	59,14	75,45	139,43	89,31	100,38	138,54	134,37	149,85	255,38
25	16,97	21,67	37,04	60,76	77,63	144,01	92,03	103,26	143,28	139,95	155,06	263,20
26	17,29	22,09	38,02	62,38	79,81	148,59	94,75	106,14	148,02	143,53	160,28	271,02
27	17,61	22,51	39,00	64,00	81,99	153,17	97,47	109,02	152,76	148,11	165,46	278,84
28	17,93	22,93	39,98	65,62	84,17	157,75	100,19	111,90	157,50	152,89	170,66	286,66
29	18,25	23,35	40,96	67,24	86,35	162,33	102,91	114,78	162,24	157,27	175,88	294,48
30	18,57	23,77	41,94	68,86	88,53	166,91	105,63	117,66	166,98	161,85	181,06	302,30
35	20,17	26,07	47,24	77,25	99,53	189,91	119,53	132,58	190,78	165,35	208,76	342,50
40	21,77	28,37	52,54	85,68	110,53	212,91	133,43	147,48	214,56	208,85	238,48	382,70
45	23,37	30,67	57,84	94,06	121,53	235,91	147,33	162,36	238,38	232,35	264,16	422,90
50	24,97	32,97	63,14	102,48	132,53	258,91	161,23	177,28	262,18	255,85	291,86	463,10
55	26,57	35,77	69,44	115,26	146,13	284,91	177,53	195,46	287,18	282,85	325,16	519,86
60	28,17	38,57	75,74	128,06	159,73	310,91	193,83	213,88	312,18	309,85	358,46	576,60
65	29,77	41,37	82,04	140,88	173,33	336,91	210,13	231,66	337,18	328,85	391,76	633,20
70	31,37	44,17	88,34	153,66	186,93	362,91	226,41	250,08	362,18	363,85	425,06	689,90
80	34,57	49,77	100,94	179,26	214,13	414,91	259,03	286,46	412,18	417,85	491,66	803,30
90	37,77	55,37	113,54	204,86	241,33	466,91	291,63	322,88	462,18	471,85	558,26	916,70
100	40,97	60,97	126,14	230,46	268,53	518,91	324,23	359,26	512,18	525,85	624,86	1.030,10

Prices are charged by 0,5 kgs according to following adders (per additional 0,5 kg)

10-20 kg	0,16	0,21	0,49	0,79	1,08	2,13	1,30	1,37	2,02	2,05	2,16	3,98
20-30 kg	0,16	0,21	0,49	0,81	1,09	2,29	1,36	1,44	2,37	2,29	2,60	3,91
30-50 kg	0,16	0,23	0,53	0,84	1,10	2,30	1,39	1,49	2,38	2,35	2,77	4,02
50-100 kg	0,16	0,28	0,63	1,28	1,36	2,60	1,63	1,62	2,50	2,70	3,33	5,67
> 100 kg	0,23	0,26	0,63	1,28	1,36	2,60	1,63	1,82	2,50	2,70	3,33	5,67

The tariff also depends on the volume of your shipment. If you send a package which is low in weight but high in volume, the volumetric weight may exceed the real weight. In that case take the volumetric weight as reference weight.

For the exact calculation of your volumetric weight in kg please check our website: [www.dhl.be](http://www.dhl.be).

Do you have a shipment heavier than 250 kg? Or a shipment with one of the dimensions exceeding 118cm x 86cm x 120cm? Please contact your

Sales Representative or our Customer Service (02/715.50.50) for an offer and tailor made service.

All prices are in euro and exclude the fuel surcharge, remote area surcharge and other surcharges.



**EXHIBIT 5: Rates extra services**

<b>Rates extra services</b>			
Category	Service	Service description	Price in euro
Pick-up	Saturday pick-up	Pick-up on Saturday	20,00 € per shipment
	Remote Areas	Pick-up in areas that are difficult to reach. For an up-to-date overview of these regions, contact our customer service department or visit <a href="http://www.dhl.be">www.dhl.be</a>	0,38 €/kg (with a minimum of 20,00 € per shipment)
	Over Weight Piece	Shipments with one or several pieces with a billed weight of more than 70kg attract an additional charge	20,00 € per piece
	Over Sized Piece	Shipments with one or several pieces with at least one dimension (l, w, h) exceeding 120 cm attract an additional charge	20,00 € per piece
Delivery	Saturday delivery	Your shipment delivered on Saturday	40,00 € per shipment
	Remote Areas	Delivery to areas that are difficult to reach. For an up-to-date overview of these regions, contact our customer service department or visit <a href="http://www.dhl.be">www.dhl.be</a>	0,38 €/kg (with a minimum of 20,00 € per shipment)
	Address Correction	A fixed surcharge is applied to any shipment that has an incorrect delivery address at the time of pick-up and the delivery cannot be fulfilled after making efforts at the destination to determine the correct address	10,00 € per shipment
	Transport insurance	Extra insurance for your shipment	1% of the insured value (with a minimum of 10,00 € per shipment)
Financial transactions	Duties & Taxes Paid (DTP)	No import duties and taxes for your receiver	18,00 € per shipment
	Split Duty & VAT (DVU)	A fee for providing a service where the import duties are paid by the sender or a third party and the VAT is paid by the recipient	18,00 € per shipment
	Neutral Delivery (NDS)	A fee for the delivery of a dutiable shipment to the receiver without any value information. The import duties and VAT are paid by a third party	18,00 € per shipment
Other services	Customs Services	For your dutiable import shipments DHL Express pays the VAT & duties in advance. For this service we charge you an administration fee	2,75% on VAT and duties (with a minimum of 10,00 € per shipment)
	Dangerous Goods	Delivery of dangerous goods (excepted quantities or ADR LQ)	43,00 € per shipment
		Delivery of Dry ice shipments or Biological substance	21,00 € per shipment
	Globalmail Business	Postal service for your international letters and printed matter	Prices upon request
	DHL GOGREEN	DHL GOGREEN is an all-inclusive carbon neutral transport service	0,125 € per kg

**Volumetric Weight**

Volumetric Weight Standard Conversion Factor

5000

See [www.dhl.be](http://www.dhl.be) for up-to-date information on surcharges, extra services and general conditions for transportation of DHL

## **EXHIBIT E**



Phone: +31(0)77 326 1942  
Mobile: +31(0)6 52013757

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**From:** Stuart Young [mailto:syoung@dex.com]  
**Sent:** woensdag 8 april 2015 8:27  
**To:** De Groot Ruud (DANZAS) (DHL NL)  
**Cc:** Alan Kheel; Mike Moore; Tim Tant; Sean Keller; Alexander Willekes.Macdonald (DHL NL); Sebastiaan Bolt (DHL NL); Frans-van Roosmalen (DHL CSI)  
**Subject:** Re: DEX DHL Plantronics Renewal and Dex System's Software

Ruud, Please find enclosed the attached in response to your correspondence of 7 April 2015. Thanks Stuart

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**From:** De Groot Ruud (DANZAS) (DHL NL) <Ruud.deGroot@dhl.com>  
**Sent:** Tuesday, April 7, 2015 1:20 AM  
**To:** Stuart Young  
**Cc:** Alan Kheel; Mike Moore; Tim Tant; Sean Keller; Alexander Willekes.Macdonald (DHL NL); Sebastiaan Bolt (DHL NL); Frans-van Roosmalen (DHL CSI)  
**Subject:** RE: DEX DHL Plantronics Renewal and Dex System's Software

Stuart,

Indeed, pursuant to the terms of the letter of intent ("LOI") signed by DHL on February 6, 2012, DEX agreed to provide DHL logistics services and proprietary software for a three year term in conjunction with DHL's co-terminus agreement with Plantronics. That term of the LOI afforded DHL the right only to access and use the software until April 1, 2015.

### ***Contract Length***

The contract between DEX and DHL will be co-terminus with the DHL and Plantronics contract, for a period of not less than three (3) years from the date of execution. An early termination clause will be required to recoup any non-recovered implementation costs. DEX will not charge DHL any termination cost in the event the three year contract is completed full term.

The full contract length, of not less than three (3) years from the date of execution has indeed expired and we have indicated to DEX that we only wish to extend the contract for an initial period of three period months. This was obviously triggered by the remaining unclear situation with DEX and the inability for 4 weeks in a row to address the required contingency.

It is our understanding that there is no existing obligation between DEX and DHL for a fixed term of three years for the renewal.

I do not know why you have an agreement with Oracle that can only be renewed with three years. DHL would never be in a position to demand a three year renewal with a customer, it could for all kinds of reasons very well be an extension of limited time from three months up.

In fact you are claiming that even if we would only extend with Plantronics for 1 year you could only provide a contract renewal for three years??

I would find that very unlikely and very unwanted, and very worrisome.

To solve the current impasse of unauthorized usage I am willing to provide for a 1 year renewal.

Looking forward to your soonest reply.



Kind regards,

**Ruud de Groot**

Account Development Manager

Phone: +31(0)77 326 1942

Mobile: +31(0)6 52013757

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**From:** Stuart Young [mailto:syoung@dex.com]

**Sent:** maandag 6 april 2015 6:18

**To:** De Groot Ruud (DANZAS) (DHL NL); Sebastiaan Bolt (DHL NL)

**Cc:** Alan Kheel; Mike Moore; Tim Tant; Sean Keller

**Subject:** DEX DHL Plantronics Renewal and Dex System's Software

Ruud,

Pursuant to the terms of the letter of intent ("LOI") signed by DHL on February 6, 2012, DEX agreed to provide DHL logistics services and proprietary software for a three year term in conjunction with DHL's co-terminus agreement with Plantronics. That term of the LOI afforded DHL the right only to access and use the software until April 1, 2015. On March 30, 2015, DEX provided DHL with an amendment to renew the LOI for an additional three years. Based upon the software's interface with Oracle the DEX Software can only be renewed for a period of three years. Because the amendment remains unexecuted, DHL is utilizing the software beyond the above indicated term and without a license to do so. Until the amendment to the LOI is fully renewed DHL's use of the DEX Systems software is unauthorized.

I look forward to receiving your immediate response.

Regards,

C. Stuart Young

General Counsel

DEX

## **EXHIBIT F**



**GENERAL TERMS AND CONDITIONS OF PURCHASE  
PLANTRONICS B.V. in Hoofddorp, The Netherlands**

These general terms and conditions ("hereinafter "Conditions") apply to all requests of **PLANTRONICS B.V.** (hereinafter "PLANTRONICS") to the other party (hereinafter "Vendor") to make an offer, to offers made by Vendor, to orders from PLANTRONICS and to all contracts of purchase concluded and to be concluded by PLANTRONICS with Vendor.

**1. GENERAL**

- 1.1. If Vendor refers to its own general terms and conditions when making an offer or confirming an order, or otherwise declares that its own general terms and conditions apply to the (contemplated) agreement, such reference or declaration of applicability will have no effect, and the Conditions of PLANTRONICS will apply.
- 1.2. Any variation from these Conditions will be valid only if and to the extent that it has been expressly confirmed by PLANTRONICS in writing.
- 1.3. If the agreement provides that Vendor must deliver goods in more than one delivery or render its performance in parts, Vendor must keep sufficient stock and must deliver the quantities of goods specified by PLANTRONICS or perform a part of the agreed work to be specified by PLANTRONICS, at any time required by PLANTRONICS and at its first request, unless otherwise agreed in writing.
- 1.4. The prices quoted and the offers made by Vendor will be fixed and irrevocable. A price that has been accepted by PLANTRONICS may not be increased without PLANTRONICS' written consent.
- 1.5. Unless otherwise agreed in writing, prices quoted will be exclusive of VAT but inclusive of all expenses incurred in connection with the fulfilment of Vendor's obligations.
- 1.6. The agreement between PLANTRONICS and Vendor will be deemed concluded when the order placed or the commission for work required by PLANTRONICS has reached Vendor in writing or by means of electronic data communication.
- 1.7. An email message shall have the same meaning as a written statement.
- 1.8. PLANTRONICS may modify an order or cancel it in full or in part at all times, unless otherwise agreed in these Conditions. Vendor will be entitled to compensation only if the order is cancelled in full. Such compensation will be limited to the costs reasonably and actually incurred by Vendor, and will in no case exceed the price stated in the order.
- 1.9. If, in Vendor's opinion, a modification as referred to in Article 1.8 has consequences for the agreed fixed price and/or the date of delivery, Vendor will be obliged to inform PLANTRONICS accordingly in writing as soon as possible, but in all cases before filling the modified order and at any rate within eight working days of being informed of the modification required by PLANTRONICS. If, in PLANTRONICS' opinion, the consequences for the price and/or delivery date are unreasonable, the parties will reasonably consult in order to reach a solution. If they fail to reach such solution, PLANTRONICS will be entitled to terminate the agreement with due observance of the provisions of Article 1.8.
- 1.10. Vendor will be entitled to have a third party carry out its obligations only with PLANTRONICS' prior written approval. This condition shall not apply in relation to transport and related obligations.
- 1.11. Vendor shall take out and maintain sufficient insurance against any damage incurred by PLANTRONICS as a consequence of Vendor's failure to perform any of its obligations, or as a consequence of a wrongful act committed against PLANTRONICS or a third party. The insurance shall amongst others cover product liability. Vendor shall provide PLANTRONICS with the relevant insurance policies at its first request.
- 1.12. The term 'working days' as used in these Conditions or in any additional agreement on purchase applied by PLANTRONICS means working days as defined by PLANTRONICS.
- 1.13. It is PLANTRONICS' policy that its employees accept no gratuities from its suppliers and that it gives no gratuities to suppliers. Vendor agrees that it has not offered or given, will not solicit or accept any gratuity, gift or remuneration for the purpose of securing business from PLANTRONICS or influencing any terms of this order.

**2. PAYMENT**

- 2.1. Unless otherwise agreed in writing, PLANTRONICS will pay for the goods delivered and/or the services rendered within 45 (forty-five) days of receipt of the invoice.
- 2.2. Unless otherwise agreed in writing, Vendor will not send the invoice before the latest of the following dates: (i) the date of delivery and approval of the goods by PLANTRONICS; or (ii) the date of installation and approval thereof by PLANTRONICS; or (iii) the date on which the work has been performed.
- 2.3. Invoices shall be submitted in duplicate and shall state: PLANTRONICS' order number; delivery/performance date; quantity of goods delivered and/or specification of services rendered; unit prices; relevant site and/or delivery address; any applicable discounts; total sum charged. If the provisions of this paragraph have not been complied with, PLANTRONICS may withhold payment and shall return the invoice. The date of dispatch of the new invoice shall be the new invoice date.
- 2.4. If PLANTRONICS fails to timely fulfil its payment obligation, it must be given notice of default and granted a reasonable term by Vendor to fulfil its payment obligation before it will actually be in default.
- 2.5. If PLANTRONICS objects to the invoice, or to the goods delivered or the work performed, it may suspend payment, without prejudice to any of its other rights.
- 2.6. PLANTRONICS may set off the amounts it owes Vendor against any amounts owed or allegedly owed by Vendor to PLANTRONICS or any of its affiliates.
- 2.7. If Vendor is in default towards PLANTRONICS in the performance of its obligations, all of the costs involved in obtaining payment out of court, including but not limited to costs involved with sending reminders, notices of default or demand notices, will be for Vendor's account.
- 2.8. In the event that PLANTRONICS is fully or largely successful in legal proceedings, Vendor will be obliged to compensate all costs incurred by PLANTRONICS in connection with such proceedings, also to the extent that such costs exceed the cost award made by the court. This clause may be invoked by PLANTRONICS irrespective of whether Vendor has appealed the relevant judgment, be it at the court of appeal or at the Supreme Court.

**3. PROPERTY RIGHTS AND CONFIDENTIALITY**

- 3.1. PLANTRONICS will retain all rights regarding information and goods, including components, materials, raw materials and ingredients, tools, drawings and specifications, and all rights with respect to software, that PLANTRONICS makes available to Vendor to perform the agreement.



- 3.2. Vendor is obliged to store the relevant goods (and the software) in a manner that clearly identifies them as PLANTRONICS' property; to the extent necessary, Vendor must mark the goods as PLANTRONICS' property.
- 3.3. Vendor shall use the information, goods and software provided to it solely to perform agreements concluded with PLANTRONICS and must return such information, goods and software to PLANTRONICS at its first request. Any electronic databases will immediately be removed from the computer systems at PLANTRONICS' request or upon termination of the agreement, and the original data carriers will be returned to PLANTRONICS.
- 3.4. Vendor must immediately draw the attention of any third parties seeking recourse to PLANTRONICS' property rights with regard to PLANTRONICS' goods (including its software) and has a duty to protect PLANTRONICS' property to the extent possible. Vendor must immediately inform PLANTRONICS of any claims of third parties and of any measures it has taken in that context.
- 3.5. If Vendor creates a new good, it will be considered to create that good for PLANTRONICS, regardless of whether any of PLANTRONICS' goods were used.
- 3.6. Any intellectual property rights arising from orders placed by PLANTRONICS will vest in PLANTRONICS and, to the extent necessary, will be transferred to PLANTRONICS at its first request.

#### **4. CONSEQUENCES OF IMPROPER PERFORMANCE**

- 4.1. Improper performance of Vendor will render that party in default immediately, without notice of default being required. Vendor must compensate PLANTRONICS for all damage resulting from any improper performance of Vendor or resulting from any wrongful act or tort of Vendor, which includes all damage incurred by PLANTRONICS as a result of third-party claims.
- 4.2. Without prejudice to its other rights under these Conditions or under the law, PLANTRONICS will at any rate be entitled to suspend payment or dissolve any agreement concluded with Vendor, in full or in part, if (i) any goods made available by PLANTRONICS to Vendor become subject to attachment, (ii) Vendor is granted a suspension of payments or is declared bankrupt, (iii) any permits or licenses are withdrawn required for the performance of the agreement, (iv) Vendor fails to fulfil one or more of its obligations ensuing from any agreement with PLANTRONICS, (v) PLANTRONICS has sound reasons to believe that Vendor is or will be unable to fulfil its obligations under any agreement, or (vi) Vendor ceases its business or if a change occurs in the control of that business.
- 4.3. The above provisions will not detract from PLANTRONICS' right to compensation of any and all losses and expenses ensuing from Vendor's failure to perform or from its anticipated failure to perform, unless Vendor cannot be held responsible for the failure (*force majeure*). Failures that will be considered improper performance at any rate include: those arising from transportation problems, illness of staff, strikes, or stagnation in the business of Vendor or its suppliers, other shortcomings of suppliers and shortage of products.
- 4.4. Vendor shall immediately inform PLANTRONICS of any event of *force majeure* on the part of Vendor, while submitting relevant evidence of the existence of such event.

#### **5. APPLICABLE LAW AND COMPETENT COURT**

- 5.1. All offers, orders and agreements as referred to in these Conditions will be governed by Dutch law. The UN Convention on Contracts for the International Sale of Goods ('CISG') does not apply.
- 5.2. In the event that Vendor is domiciled in a Member State of the European Union or in Switzerland or Iceland at the time that proceedings are commenced, any and all disputes relating to the offers, orders and agreements as referred to in these Conditions will be settled by the competent court in Amsterdam, the Netherlands. The above will not affect PLANTRONICS' power to submit a dispute to the court that would be competent in the absence of this provision.
- 5.3. In the event that Vendor is not domiciled in a Member State of the European Union or in Switzerland or Iceland upon the commencement of proceedings, any and all disputes relating to the offers, orders and agreements as referred to in these Conditions will be settled in accordance with the rules of the Netherlands Arbitration Institute (*Nederlands Arbitrage Instituut*, or *NAI*). Arbitration will take place in Amsterdam, the Netherlands. The case will be submitted to three arbitrators and the arbitration proceedings will be conducted in Dutch.

#### **PURCHASE OF GOODS**

##### **6. GENERAL**

- 6.1. In addition to Articles 1 to 5, the following provisions will apply if an agreement relates to the purchase of goods.
- 6.2. Unless otherwise agreed in writing, the goods must be delivered D.D.P. to the address stated by PLANTRONICS (in accordance with the most recent version of the Incoterms).
- 6.3. Unless otherwise agreed in writing, title to the goods will pass to PLANTRONICS at the moment of delivery. The risk in the goods will pass upon delivery, unless PLANTRONICS rejects the goods.
- 6.4. Vendor must execute the order on the agreed date of delivery. Agreed delivery times are of the essence.
- 6.5. Vendor must notify PLANTRONICS promptly, in writing, of any and all circumstances that are expected to cause the agreed delivery term to be exceeded. Such notification does not release Vendor from its obligations with respect to the agreed delivery time nor from its liability in that respect.
- 6.6. PLANTRONICS is entitled to postpone delivery. In that event, the risk in the goods will not pass to PLANTRONICS and Vendor will be obliged to store, conserve, secure and insure the goods properly packed, separated and identifiable, at its costs.

##### **7. INSPECTION**

- 7.1. PLANTRONICS is at all times entitled to inspect the goods to be delivered or have those goods inspected, both during production, processing and storage, and after delivery, and Vendor shall lend any assistance required by PLANTRONICS in this respect. PLANTRONICS' inspection or its decision to refrain from inspection prior to delivery will not qualify as delivery or acceptance of the goods to be delivered, nor affect Vendor's obligations vis-à-vis PLANTRONICS in any other way.
- 7.2. Vendor shall allow PLANTRONICS or third parties designated by PLANTRONICS access to the production, processing or storage site or sites at PLANTRONICS' first request. If the goods cannot be inspected due to a circumstance for which Vendor can be held responsible, Vendor will be liable for the loss thus caused.
- 7.3. If PLANTRONICS rejects the goods, Vendor will be liable for any and all losses thus arising. Without prejudice to PLANTRONICS' rights, Vendor must, at PLANTRONICS' first request and within five (5) working days after the



rejection/that same day or the following working day (in consultation), or so much earlier as PLANTRONICS may require, ensure that the goods delivered are repaired or replaced. If Vendor fails to fulfil this obligation, PLANTRONICS may purchase the required goods from a third party or take measures or have measures taken by third parties for Vendor's account and risk, without prejudice to PLANTRONICS' other rights.

- 7.4. PLANTRONICS may complain about visible defects during 20 (twenty) working days after arrival of the goods at their final destination or any longer period allowed by the law. PLANTRONICS may complain about invisible defects during 20 (twenty) working days after their discovery or any longer period allowed by the law. Acceptance of the delivered goods by PLANTRONICS will be without prejudice to any and all claims of PLANTRONICS against Vendor.

**8. TRANSPORTATION AND PACKAGING**

- 8.1. Vendor must properly pack the goods for shipment to the delivery address. PLANTRONICS may at all times return the (transport) packaging materials for Vendor's account. Vendor shall collect all packaging materials used for the delivery or have such materials collected from PLANTRONICS at PLANTRONICS' first request, without being entitled to charge any costs in this respect. Any processing or destruction of the packaging materials by Vendor will be for its account and risk.
- 8.2. In offering the goods to be delivered for transportation or in transporting them, Vendor shall comply with any and all applicable rules and regulations in all countries through which the goods to be delivered will pass. Vendor shall furnish all information required and desired by PLANTRONICS on the goods, including but not limited to any information regarding or required for their handling, import, custom clearance or taxation.
- 8.3. Apart from the delivery address, the product names and code numbers used by PLANTRONICS with respect to the goods to be delivered must be stated on all accompanying consignment papers with respect to the goods. Failure to do so will entitle PLANTRONICS to reject the goods.

**9. GUARANTEE**

- 9.1. Vendor guarantees that the delivered goods (including the packaging material) are in conformity with the agreement. This means at any rate that the delivered goods will be suitable for the purpose for which they are intended by PLANTRONICS. In so far as Vendor is unaware of such purpose at the time of conclusion of the agreement, Vendor must obtain information on such purpose in writing from PLANTRONICS in advance. Vendor further guarantees that the delivered goods are in conformity with the agreed specifications and any approved samples, that they are free from rights of third parties and free from defects, including at any rate errors in the design, material and manufacture, and comply with all applicable statutory rules and regulations, including the legal rules and regulations on quality, the environment, safety and health in the country of delivery and, in so far as known to Vendor, the country of destination.
- 9.2. Unless otherwise agreed in writing, Vendor also guarantees that the goods will be delivered complete and ready for use. This means, among other things, that Vendor must ensure that any and all relevant components, ancillary materials, accessories, tools, spare parts, user instructions (in the Dutch and English languages) and instruction manuals (in the Dutch and English languages) with respect to the goods are delivered along with the goods, even if no explicit request is made in this context. Vendor is obliged to provide clear (product) information in the Dutch and English languages along with the delivered products. PLANTRONICS is given permission to use this documentation. 'Use' also means multiplication for use by PLANTRONICS.
- 9.3. Vendor guarantees that components and spare parts of the delivered goods will be deliverable during the technical life of the delivered goods.
- 9.4. If the goods are not in conformity with the agreement, PLANTRONICS may, at its discretion, require that the delivered goods be repaired or replaced, or that the missing part or defective parts be delivered, or that the purchase price be reimbursed, without prejudice to PLANTRONICS' other rights under these Conditions or under the law.
- 9.5. PLANTRONICS may return or keep goods that are not in conformity with the agreement at Vendor's costs until Vendor has issued further instructions as to what should be done with the goods. Any costs to be incurred by PLANTRONICS will be for Vendor's account. Storage of the goods will be for Vendor's account and risk. PLANTRONICS may require Vendor to ensure that the defective goods are repaired at the location of the goods, without charging any additional costs.
- 9.6. Any of PLANTRONICS' advice or statements regarding the goods to be delivered will not detract from Vendor's responsibility and liability to properly perform its obligations.

**WORK TO BE PERFORMED**

**10. GENERAL**

- 10.1. The following provisions apply in addition to Articles 1 to 5 if and in as far the agreement relates to the performance of work and/or the contracting of work.
- 10.2. PLANTRONICS and Vendor agree that Vendor undertakes towards PLANTRONICS to perform the work described in this agreement in a relationship other than an employer-employee relationship.

**11. TERM OF PERFORMANCE**

- 11.1. Vendor shall perform the agreement strictly on or within the agreed time. Agreed times for the performance of the work are of the essence, unless expressly otherwise agreed in writing.
- 11.2. Unless otherwise ensues from the agreement, Vendor shall perform the work during PLANTRONICS' regular working hours. However, PLANTRONICS may require Vendor to perform work outside such working hours. In that event, Vendor will be allowed to add a surcharge only if this has been agreed in advance.
- 11.3. The compensation agreed by the parties will be regarded as full compensation, including all related costs and expenses, for the work performed.

**12. DURATION OF THE AGREEMENT**

- 12.1. Unless otherwise agreed in writing, each agreement will be entered into for one specific and specified job.
- 12.2. The fact that PLANTRONICS places orders with Vendor on a regular basis will not entitle Vendor to claim that it has a continuing performance agreement whose termination requires the giving of notice.
- 12.3. PLANTRONICS is entitled to terminate the agreement prematurely in full or in part at all times. In that event, PLANTRONICS will never be obliged to more than (i) payment for the work actually performed in the event of periodic



payment; or (ii), in the event of a fixed agreement sum, payment of a proportional part of the compensation agreed, based on the contractual term already expired and the work performed.

- 12.4. Vendor will not be permitted to terminate a fixed-term agreement.

**13. OBLIGATIONS OF VENDOR**

- 13.1. Vendor shall perform the work exercising the due care required of a diligent contractor. Vendor warrants that, in performing the agreement, it, its staff and any third parties that it employs with PLANTRONICS' consent will strictly observe the instructions and wishes of PLANTRONICS or other natural persons or legal entities designated by PLANTRONICS.
- 13.2. Vendor warrants that the result envisaged for the project will be achieved and that the result of the work to be performed by it or on its behalf will meet the qualifications set by PLANTRONICS.
- 13.3. Vendor will perform the work entirely at its own risk.
- 13.4. Vendor is deemed to be aware of the legal requirements and governmental regulations relevant to the performance of the agreement, including safety, health and environmental rules and regulations, and shall comply with such requirements and regulations in performing the work.
- 13.5. Vendor warrants that its staff meet and will continue to meet the normal requirements of training, expertise and experience, considering the nature and content of the project, for the duration of the agreement.
- 13.6. Vendor must, for its own account, arrange for the supply and removal of any materials required.
- 13.7. If PLANTRONICS so desires, a responsible person designated by Vendor will always be present at the work site during the performance of the work by Vendor. That person's name must be known to the foreman designated by PLANTRONICS. Upon commencement, interruption or termination of the work, that person must report to the foreman designated by PLANTRONICS, who will assess whether Vendor has acted in conformity with the arrangements made in this matter.
- 13.8. Vendor shall arrange for any permits or licenses that may be required in connection with the performance of the agreement.
- 13.9. Vendor warrants that the staff employed to perform the agreement will do so in accordance with any special requirements to be set by PLANTRONICS or, absent such special requirements, in accordance with stringent requirements of professionalism and expertise, and it guarantees that the staff will also observe any and all company rules and regulations of PLANTRONICS in performing the work. Vendor shall acquaint itself with such rules and regulations prior to performing the work. A copy of those rules and regulations will be provided to Vendor on request.
- 13.10. The foreman designated by PLANTRONICS may require that staff who, in PLANTRONICS' reasonable opinion, do not meet the above requirements be removed and replaced as soon as reasonably possible.
- 13.11. Vendor shall timely provide PLANTRONICS with a list of the persons involved in the work. Vendor's staff must at all times be able to identify themselves. PLANTRONICS may set further rules in this respect.
- 13.12. Vendor's staff, as referred to in these Conditions, also means third parties that are involved in the performance of the agreement by Vendor.
- 13.13. If Vendor improperly performs its obligations or commits a wrongful act vis-à-vis PLANTRONICS or a third party, it will be obliged to reimburse PLANTRONICS for the loss thus incurred by it.
- 13.14. Vendor shall fully indemnify PLANTRONICS against any claims for damages in connection with the performance of the agreement that may be asserted by third parties (including Vendor's staff).

**14. SITES**

- 14.1. Before the work is commenced, Vendor must acquaint itself with the circumstances on the site and in the buildings where the work must be performed that may affect the performance of the agreement.
- 14.2. Any delay in the performance of work due to circumstances as referred to in paragraph 1 will be entirely for Vendor's account and risk.
- 14.3. Vendor, and the staff and/or third parties employed by it, may access the relevant sites only with PLANTRONICS' prior approval.
- 14.4. Vendor shall ensure that its presence at the site and in the buildings of PLANTRONICS does not impede the smooth continuation of PLANTRONICS' or third parties' operations.

**15. VARIATIONS IN THE AGREED WORK AND MODIFICATIONS**

- 15.1. Additional work means the performance of work that Vendor is not obliged to perform under the agreement. PLANTRONICS is obliged to pay Vendor for additional work only if the additional work has been expressly agreed in writing by PLANTRONICS. The compensation payable for additional work will also be determined in this additional agreement.
- 15.2. Work will be omitted from the originally agreed work if there are circumstances due to which Vendor cannot perform or has not performed all of the agreed work, and this fact cannot be attributed to Vendor. If work is omitted from the originally agreed work, Vendor must notify PLANTRONICS as soon as possible. Unless otherwise agreed, an omission of work from the originally agreed work will result in a reduction of the compensation that PLANTRONICS owes Vendor that is proportional to the omission of work and the other cost savings for Vendor.
- 15.3. PLANTRONICS may at all times reasonably modify the agreed work. If a modification results in work being omitted from the originally agreed work, the compensation that PLANTRONICS owes Vendor will be proportionally reduced by the omission of work and the other cost savings for Vendor.

**16. TAXES AND SOCIAL SECURITY CONTRIBUTIONS**

- 16.1. Vendor undertakes to fulfil its statutory obligations to pay the social security contributions and (wage) tax due in connection with orders placed with it and, to the extent applicable, to strictly comply with any applicable law and/or Collective Labour Agreement.
- 16.2. If, under law or regulation, PLANTRONICS can be held liable for any social security contributions and wage tax or other taxes payable by Vendor in connection with the performance of the agreement, PLANTRONICS will at all times be entitled to withhold the amount payable under the said legislation from any amount that it is required to pay to Vendor, so that it may pay these amounts directly to the authorities in question by which such payment shall free PLANTRONICS of its payment obligations.



- 16.3. If PLANTRONICS is required to pay the said taxes and contributions after being held liable for taxes and contributions not paid by Vendor, or any Vendor coming after it in the sequence of contracts (such as in the case of subcontracting), PLANTRONICS may claim the total sum from Vendor, without prejudice to PLANTRONICS' statutory rights vis-à-vis third parties in the case of subcontracting.
  - 16.4. Vendor will open and maintain a blocked bank account or cooperate with any other measures at PLANTRONICS' first request, so that PLANTRONICS can pay the part of the amounts payable to Vendor that are intended for the payment of social security premiums and taxes.
  - 16.5. Vendor shall allow PLANTRONICS to inspect its salary accounts and, at its first request, to enable PLANTRONICS to verify whether Vendor complies with its obligations towards the tax or any other relevant authorities under this Article.
- 17. COMMENCEMENT AND DELIVERY OF THE WORK**
- 17.1. Vendor shall lend its assistance in keeping the building site clean, regardless of whether the agreement involves services being rendered or work contracted out. In particular, it will be obliged to always properly clear away any rubble and waste resulting from the work, packaging material, residual material, as well as used tools, materials and used goods. Vendor is responsible for the removal of any hazardous substances.
  - 17.2. Vendor will bear the risk of the goods, the ancillary materials and the material used by Vendor to perform the agreement. This risk will include the risk of theft, loss, etc.
  - 17.3. If Vendor must also perform work, including installation work, or if the agreement also involves the contracting of work, such work or installation work will be deemed to have been delivered only after Vendor has notified PLANTRONICS either in writing or orally that the work has been completed and the persons designated by PLANTRONICS have approved the work and notified Vendor accordingly in writing. Until the moment of delivery, Vendor will perform the work at its own risk. Vendor will be entitled to charge any additional work only with PLANTRONICS' prior written approval.
- 18. WORKERS MADE AVAILABLE**
- 18.1. Vendor will be liable for any loss that PLANTRONICS may incur due to mistakes made by workers of Vendor, or made available by Vendor, who work with PLANTRONICS on a structural basis or otherwise, without prejudice to the above provisions.
  - 18.2. If PLANTRONICS pays Vendor on an hourly basis, Vendor will be entitled to charge only the hours actually worked by the relevant worker. In the event of doubt, Vendor must prove that the worker in question has actually worked for the stated number of hours.
  - 18.3. If a worker falls ill, Vendor must ensure that it provides a replacement as soon as reasonably possible upon PLANTRONICS' first request.

## **SOFTWARE**

### **19. GENERAL**

- 19.1. In addition to the above provisions the following provisions apply if the agreement relates to the delivery, on any legal basis whatsoever, and/or installation of and/or advice on software.

### **20. RIGHTS OF THIRD PARTIES**

- 20.1. VENDOR WARRANTS THAT THE SOFTWARE DELIVERED AND/OR PRODUCED DOES NOT VIOLATE ANY THIRD-PARTY RIGHT AND INDEMNIFIES PLANTRONICS AGAINST ALL DAMAGE RESULTING FROM CLAIMS OF THIRD PARTIES ON THE GROUND OF SUCH (ALLEGED) VIOLATION.
- 20.2. If PLANTRONICS is granted a licence that will be a non-exclusive and perpetual right of use, unless otherwise agreed in writing.

### **21. DELIVERY AND INSTALLATION**

- 21.1. The software shall be delivered entirely complete and ready for use on the agreed dates. Vendor shall inform PLANTRONICS in its offer – and after the offer has been made – if a newer version of the software in question is placed on the market. Unless otherwise agreed in writing, if new software is delivered, the latest release of that software will be delivered. All tools that are required for sound operation, additional documentation and application software will also be delivered, even if that has not been agreed in so many words.
- 21.2. If it follows from the agreement with Vendor, which includes these Conditions, that installation will also take place, Vendor will timely state the time that will be involved therein, as well as the consequences for the operation of PLANTRONICS.
- 21.3. Vendor warrants that the software to be delivered is compatible with the automation and/or operating systems already present at PLANTRONICS.
- 21.4. Any defect in the software will be repaired free of charge within 24 hours. If the software does not function properly, whether or not in combination with other software, it will be considered faulty and Vendor shall be considered to be in default.
- 21.5. If the software has been produced at the instructions of PLANTRONICS (known as 'custom-made work'), all rights will vest in PLANTRONICS and, in so far as necessary, will be transferred to it at its first request. The source codes will be made available to PLANTRONICS at its first request. The software produced will be stored only for the benefit of PLANTRONICS and will be delivered only to PLANTRONICS. Vendor may not use the know-how created or developed at the instructions of PLANTRONICS for orders issued by third parties or otherwise.
- 21.6. Unless agreed otherwise in writing, such upgrade of software and the above providing of tools documentation and application software will be free of extra charge.



**DECLARATION OF LEONARD SCHNEEMAN**

I, LEONARD SCHNEEMAN, hereby declare as follows:

1. I am over the age of twenty-one (21) and make this declaration of facts known to me and, if called upon, I could and would testify competently to the facts stated herein.

2. I am giving this Declaration in support of DEX System's opposition to the Motion to Dismiss filed by Defendants, Deutsche Post International B.V. and DHL Supply Chain Netherlands B.V.

3. I am employee of Data Exchange Corporation and I currently hold the title of President of DEX Supply Chain Services in charge of our worldwide operations. I have been employed with Data Exchange Corporation for over thirty (30) years.

4. In 2012, I held the title of Chief Technology Officer for the Company. On or about November 21, 2012, I executed the attached document entitled "Mutual Nondisclosure and Network Access Agreement (NDA)" (hereinafter "NDA") (Exhibit "A") to enable DHL and Data Exchange Corporation, including DEX Systems, Inc., a subsidiary of Data Exchange Corporation (hereinafter "the Company"), to "cover all disclosures of confidential information between the parties concerning future business or contractual relationships. []" As the NDA's recital provides, one of the objectives of DHL and the Company, included the need for DHL and the Company to



1 share proprietary and confidential information and for DHL to provide access to its  
2 network "via VPN to the Company." The NDA also contains a governing law provision  
3 announcing that the NDA shall be construed in accordance with the laws of the State of  
4 California and that those laws shall govern the Agreement. (Exhibit "A" pg. 6 ¶ 17.)  
5  
6

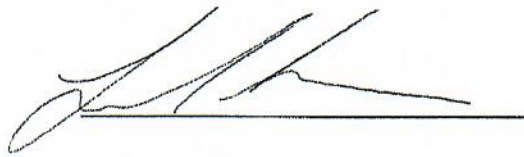
7         5. The NDA defines "confidential information" to include, without  
8 limitation, "technical information, network configuration, pricing and business models,  
9 contracts and contractual relationships [...] business and methods of operation; strategic,  
10 marketing and business plans." (Ex. A, pg. 3, ¶ 1. a.i.) The scope of the NDA included  
11 information shared pertaining to "any" DHL or Deutsche Post World Net organization  
12 and/or their constituent companies" and included "any existing business and contractual  
13 relationship between the Company and any DHL or Deutsche Post World Net Company  
14 (Ex. A, pg. 3 ¶ 1.a.iv. and v.)  
15  
16  
17  
18

19         6. In the course of dealings between DHL and DEX Systems, Inc., the  
20 Company, the Company and DHL understood that this agreement would apply to  
21 confidential and proprietary information shared or exchanged between the Company  
22 and DHL. (Ex. "A" pg. 1)  
23  
24

25         7. The attached document entitled "**Deutsche Post DHL VPN Request**"  
26 (hereinafter "VPN request") (Ex. "B") reflects the understanding between DHL and  
27 the Company that DHL would be working with DEX  
28

1 Systems, Inc. in partnership which included the creation of a virtual private network  
2 between DHL Supply Chain Services Netherlands and DEX Systems, Inc. The VPN  
3 request at the top of page 3 makes direct reference to the above NDA between DHL and  
4 the Company. (Exhibit "B" pg. 3)  
5

6  
7 I declare under penalty of perjury under the laws of the State of California and United  
8 States of America that the foregoing facts are true and correct, and that this declaration  
9 was executed on September 11, 2015.  
10  
11  
12

13  
14 A handwritten signature in black ink, appearing to read 'Leonard Schneeman', is written over a horizontal line.

15 Leonard Schneeman  
16  
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## **EXHIBIT A**



**MUTUAL NONDISCLOSURE AND NETWORK ACCESS AGREEMENT (NDA)**

Between **DHL Entity**  
("DHL")

And **Data Exchange Corporation d/b/a DEX**  
("Company")

Date: **November 21, 2012**

Confidential Information (as hereinafter defined) may be disclosed between DHL and Company, subject to the attached terms and conditions, for the following specific purpose(s) only:

***REMOTE ACCESS TO DHL NETWORK VIA VPN***

The attached three (3) pages are an integral part of this Mutual Nondisclosure Agreement.

This agreement shall take effect on the date set forth above ("Effective Date"), but it shall cover all disclosures of Confidential Information between the parties concerning potential future business or contractual relationships, whether such disclosures were or are made prior to, on, or after the Effective Date.

For convenience, this agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. The agreement may become effective when the parties have exchanged facsimile signatures.

**SIGNED by DHL Entity**

By: [Signature]

Title: Site Manager

**SIGNED by Company**

By: [Signature]

Title: CTO





## MUTUAL NONDISCLOSURE AGREEMENT

THIS AGREEMENT is made and effective between DHL and Company on the date shown on the cover page.

WHEREAS, both DHL and Company develop, use and protect valuable confidential and proprietary information and trade secrets; and whereas DHL will provide access to its network via VPN to Company;

WHEREAS, the parties are interested in disclosing to each other certain Confidential Information (as hereinafter defined) for the purpose of evaluating or obtaining goods or services, or for the purpose of negotiations which may result in formation of a contractual relationship between DHL and Company, or other purposes as specified on the cover page;

NOW, THEREFORE, the parties agree as follows:

### 1. DEFINITIONS.

#### a. Confidential Information means:

- i. Computer software programs and related data; samples, drawings, and specifications; Company characteristics and identities; trade secrets; technical information; discoveries, ideas, concepts, techniques, know-how; performance or process data; network configuration and architecture; cost and financial information; pricing and business models; contracts and contractual relationships; personnel information; methods of doing business and methods of operation; strategic, marketing, and business plans;
- ii. Any written or oral information identified or designated by either party as "confidential," "private," or "proprietary" (or similar terms);
- iii. Any information provided under circumstances reasonably indicating that it is confidential or proprietary;
- iv. In the case of DHL, information relating to the DHL Worldwide Express organization and the greater Deutsche Post World Net organization and/or their constituent companies;
- v. Any existing business and contractual relationships between Company and any DHL or Deutsche Post World Net company;
- vi. All past, present and future disclosures and documents drafted by either party in furtherance of discussions and negotiations concerning potential future business and/or contractual relationships.
- vii. all written or oral Requests for Proposal, Requests for Information, Requests for Quotes, and responses thereto, which are exchanged between the parties, whether or not specifically designated as confidential.



- b. Disclosing Party shall refer to the party disclosing Confidential Information to the other.
  - c. Receiving Party shall refer to the party receiving Confidential Information disclosed by the other.
3. **LIMITED USE.** The Receiving Party may use the Confidential Information solely for the purpose(s) described on the cover page and for no other purpose, unless otherwise agreed in writing by the Disclosing Party. Without limiting the generality of the foregoing, Recipient expressly agrees not to use the Disclosing Party's Confidential Information in competition with the Disclosing Party nor use it in any unlawful manner.
4. **OWNERSHIP.** All Confidential Information disclosed by one party to the other shall remain the exclusive property of the Disclosing Party or the third party which owns it.
5. **DUTY OF NONDISCLOSURE.** Unless the Disclosing Party consents in writing, the Receiving Party shall not disclose to any other person or entity any Confidential Information received from the Disclosing Party, except to the extent that it
- a. is or becomes part of the public domain without breach of this agreement by the Receiving Party,
  - b. was rightfully acquired by the Receiving Party prior to the disclosure by the Disclosing Party,
  - c. is subsequently legally obtained by Receiving Party from a third party,
  - d. is developed independently by the Receiving Party, or
  - e. is disclosed under compulsion of law, provided however that the Receiving Party shall provide prompt prior written notice thereof to Disclosing Party to enable Disclosing Party to seek a protective order from a court or otherwise to prevent or limit such disclosure.
- In the event of a disputed disclosure, the Receiving Party shall bear the burden of proof of demonstrating that the information falls under one of the within-described exceptions.
6. **SECURITY PRECAUTIONS.** The Receiving Party recognizes the value and importance of the protection of the Disclosing Party's Confidential Information. The Receiving Party agrees to keep Confidential Information received from the Disclosing Party in a safe and secure place and to restrict access to it to those employees, independent contractors and representatives (including, in the case of DHL, representatives of other DHL companies) who need to receive the information in order to carry out the purpose(s) described above. The Receiving Party shall instruct such employees, independent contractors and representatives to hold in confidence all such Confidential Information.





7. **RESTRICTIONS ON COPYING.** The Receiving Party shall not make any copies of any Confidential Information, except those which are necessary to carry out the above-stated purposes. Also, the Receiving Party agrees that it will not remove, overprint or deface any notice of copyright, trademark, logo, or other proprietary notices, or notices of confidentiality, from any originals or copies of the other party's Confidential Information.
8. **RETURN OF CONFIDENTIAL INFORMATION.** All documents, drawings, sketches, designs and other record-bearing media containing Confidential Information, together with all copies thereof, shall be returned to the Disclosing Party upon written request, or upon receipt of notice of breach from the Disclosing Party pursuant to Paragraph 22.
9. **OTHER PRECAUTIONS.** In addition to the foregoing, the Receiving Party shall take whatever other steps are necessary or appropriate to protect the Disclosing Party's Confidential Information, applying at least the same security measures as it employs to protect its own Confidential Information (which shall not be less than the standard of a reasonable person).
10. **ACCESS.** Access to and use of the DHL Network, defined as all telecommunication equipment and access owned, operated or managed by DHL, is limited to access to the Information provided by DHL on the DHL Network. Any access to, use of, or attempt to access or use any other area of the DHL's computer system or other information contained on that system for any other purposes is strictly prohibited. Unauthorized access to or use of the DHL Network, its contents and downloads is unlawful and may result in legal proceedings being taken against the Company by DHL.
11. **LIABILITY.** Neither DHL nor any of its Affiliates shall be liable for any damage suffered by the Company due to (i) technical faults, non-availability or interruptions in the network (including maintenance work required by the system), or (ii) overloads affecting its own systems, or (iii) the misuse of the network by any employee of the Company not authorized to use the DHL Network. Neither DHL nor any of its Affiliates shall be liable under any circumstances for any direct, indirect, special, incidental, punitive or exemplary damages, including lost profits (even if DHL is expressly advised of the possibility thereof). DHL and its Affiliates are not liable for any damages or losses that may be caused to any equipment and other software, including but not limited to loss of data, due to any viruses, defects or malfunctions in connection with the access or use of the DHL Network.
12. **PRIVACY POLICY/SECURITY OF INFORMATION.** DHL undertakes to comply with the terms of the Privacy Policy Statement. No data transmission over the Internet can be guaranteed as totally secure. Whilst DHL strives to protect such information, DHL does not warrant and cannot ensure the security of any information which Company transmits to DHL. Accordingly, any information that is transmitted to DHL is transmitted at the risk of the Company. Nevertheless, once DHL receives the



transmission, DHL will take reasonable steps to preserve the security of such information.

13. To the maximum extent permitted by law:
  - DHL excludes all conditions and warranties implied into this Agreement;
  - DHL shall not be liable whether in negligence, any other tort or in contract or in any other basis whatsoever for:
    - i. any loss or destruction or damage caused by the use of the DHL Network;
    - ii. any non-availability of, disruption to, or failure of the DHL Network or the Services; or
    - iii. any advice, representation, Information, any assistance or any service of any kind provided in any form by or on behalf of DHL in the course of or in connection of the DHL Network or the Services; or
    - iv. any consequential or indirect loss whatsoever arising from or in connection with any of the matters or things referred to in (i), (ii) or (iii) above (including, without limitation, loss of profit or loss of market).
14. **NO WARRANTY OR LICENSE.** Except for the right of the Receiving Party to use the Confidential Information as expressly set forth in this agreement, no license is granted or conveyed under any patent, copyright, trademark, trade secret or other proprietary right by the transmittal of Confidential Information by the Disclosing Party to the Receiving Party hereunder. CONFIDENTIAL INFORMATION IS PROVIDED "AS IS," AND THERE ARE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE INFORMATION, INCLUDING BUT NOT LIMITED TO A WARRANTY AGAINST INFRINGEMENT, ACCURACY, COMPLETENESS, OR SUFFICIENCY. The Receiving Party will use the Confidential Information in a safe and prudent manner and is responsible for all risk or loss arising out of its use.
15. **SURVIVAL OF OBLIGATIONS.** The obligations set forth in this agreement shall survive for a period of five (5) years following the completion or termination of the above-stated purposes.
16. **SUCCESSORS AND ASSIGNS.** Neither party may assign this agreement in whole or in part without the prior written consent of the other party, except that it may, upon written notice to the other party, be assigned (a) to a parent, subsidiary or affiliate company with 100% common ownership, or (b) to a successor-in-interest through merger, acquisition or sale of substantially all assets. Subject to the foregoing, this agreement shall bind and inure to the benefit of the successors and assigns of each party.





17. **GOVERNING LAW.** This agreement shall be governed and construed in accordance with the laws of the State of California and where applicable, the federal laws of the United States of America.
18. **SEVERABILITY.** If any provision of this agreement should be held invalid or unenforceable in a final court of law in any jurisdiction, the invalid or unenforceable portion shall be deemed stricken with respect to that jurisdiction only, and such ruling shall not affect that provision in any other jurisdiction or any of the provisions in any other jurisdiction.
19. **FINAL AGREEMENT.** This agreement is the final and entire agreement between the parties with reference to the subject matter herein, and all previous discussions, promises, and representations relative hereto are herein merged.
20. **NOTICES.** All notices hereunder shall be in writing and transmitted via air express (with proof of delivery); facsimile (with a machine-provided receipt); personal delivery; or certified or registered mail (postage prepaid with return receipt requested), to the parties at the addresses given on the cover page of this agreement, or such other addresses as may be specified by written notice given in the manner specified herein. Notices will be deemed to have been given when received.
21. **WAIVER; MODIFICATION.** No waiver by either party of any term or condition hereof shall be valid unless made in writing signed by an authorized representative of that party. No waiver on any one occasion shall be effective to waive that or any other term or condition on any other occasion. No exercise of any remedy by either party on one occasion shall be deemed an exclusive election of that remedy on that or any other occasion. All modifications to this agreement shall be in a writing signed by authorized representatives of both parties. No oral agreement, statement or representation shall be effective to waive or modify any provision of this agreement.
22. **BREACH; REMEDIES.** In the event of a material breach or threatened breach of this agreement by the Receiving Party, the Disclosing Party shall give written notice to the Receiving Party, and the Receiving Party shall immediately remedy the breach (if remediable). If the breach is not remediable, the Disclosing Party may (1) seek immediate injunctive relief in a court of competent jurisdiction (subject to notice and opportunity to defend in accordance with applicable law), and (2) demand and obtain the immediate return of all Confidential Information from the Receiving Party. These remedies are in addition to any other remedies available at law or equity.
23. **RELATIONSHIP OF THE PARTIES.** This agreement is not intended to constitute, create, give effect to, or otherwise recognize a joint venture, partnership, franchise, or formal business entity of any kind. Each party shall act as an independent contractor and not as an agent of the other for any purpose whatsoever and neither shall have any authority to bind the other.



24. **NO IMPLIED CONTRACT.** Confidential Information provided to Receiving Party does not and is not intended to represent an inducement, offer, or promise by Disclosing Party or a commitment by Disclosing Party to enter into any business relationship with Receiving Party or with any other entity. If the parties desire to pursue business opportunities, the parties will execute a separate written agreement to govern such business relationship.

\* \* \*

## **EXHIBIT B**



**Deutsche Post DHL****xVPN Request****xVPN Request****Business Unit and Other Information**

Business Unit	DSC
Business Region	Mainland Europe
Country	Netherlands
Sales Order (Work Package) Number	15012825
Project Name	N.A.

**Customer Information**

Customer Reference (e.g., Customer, Partner or External)	DEX
Company Name	DEX (Data Exchange Corp.)
Address	3800 Via Pescador
City	Camarillo
State	CA
Postal Code/ZIP	93012
Country	United States
Phone	

**Customer Information - Primary Business Contact**

Name	Rajiv Duggal
Function	
Phone	805-312-3499
Email	rduggal@dexsystems.com

**DHL Link Requester**

Name	Gerard Van Seumeren
Phone	+31 20 6555645
Email	Gerard.vanSeumeren@dhl.com
Service Desk Group	

**DHL Link Request Owner**

Name	Mark Kruysen
Job Title	Service Level Manager
Department	IT Benelux
Phone	+31 6 52013749
Email	mark.kruysen@dhl.com
Business Division	V7, Supply Chain
Service Desk Group	

**ELR Requirements**

Please specify ELR expiration date	12.02.2015
Average traffic throughput	
Unit	
Max. traffic throughput	
Unit	
Maximum number of Concurrent Connections (optional)	

**Business Case**

Business Case	DHL and DEX work in partnership to provide a complete end to end solution for reverse logistics business of Plantronics, a new customer in Beringe. Warehouse system is provided by DEX
---------------	---

**Attached Supporting Documents**

Document Name	File Name
Notspecified	

**Data Classification**

B



Data types		
Data type	Data Classification	Data Regulations
Web Access to application and Print output from application	For Internal Use	None

## Additional Information

Additional Information

## Admin Additional Information

Admin Important Information

Admin Additional Info

Document Name	File Name
Not specified	

Request Name	DEXPHX005
Request Id	130212-XVP-7532
Workflow Status	Pending Security Approval
Task Progress	Assigned
Request Type	4
Creation Date	2013-02-12T14:55:05
Archive	No
Priority	Normal
New/Update	False

## Submission

By submitting this ELR, I confirm that I have read and agreed with the above	Y
I confirm that the Service Owners of services in scope of this ELR provided their approval for implementation	Y

## Approvals

## List of Approvals:

Approval Type	Approved	Emails	Approved By	Role	Date	Note
Technical Approval	Y	AMIS_TS_Security@dhl.com	dwimberl	ELM Member	26/06/2013 19:38:58	
Security Approval	N	todd.luther@t-systems.com bryon.reynolds@t-systems.com		Security Approver		
Financial Approval	Y			Financial Approver		Not required yet
Implementation	N	AMIS_TS_Security@dhl.com		ELM Member		
PIR for Requester	N			Requester		
PIR for SA	N	elm.netmaster@dhl.com		SA		

## Readers &amp; Notifications

## List of people who can access this request

Name	Email	Role
Pieter Oudenhoven	pieter.oudenhoven@dhl.com	Senior Network Specialist

## List of service owners who can receive notifications

Name	Email	Role
Not specified		

## DHL Link Secondary Contact

Name	Eugene Bijsterveld
Job Title	Application Analyst
Department	IT Benelux
Phone	+31 6 53332893
Email	Eugene.Bijsterveld@dhl.com
Business Division	V7, Supply Chain
Service Desk Group	

## Non-Disclosure Agreement



<b>Attach Non-Disclosure Agreement (NDA)</b>					
<b>Document Name</b>			<b>File Name</b>		
NDA DEX -DHL			NDA DEX for VPN.pdf		
<b>This Version Description</b>					
<b>Communication Matrix/Network Diagrams</b>					
<b>Communication Matrix/Network Diagrams</b>					
<b>Document Name</b>			<b>File Name</b>		
Not specified					
<b>Primary Gateways</b>					
<b>Primary Gateway</b>					
<b>Gateway</b>		<b>External IP Address (Routable, No NAT)</b>		<b>Make and Model</b>	
Primary DHL Gateway		199.41.253.14		Juniper	
Primary Remote Gateway		72.67.208.180		Cisco 2911	
<b>Encryption Domain</b>					
<b>Remote IP Address/Network</b>			<b>DHL IP Address/Network</b>		
7.250.77.160/29			199.41.0.0/22		
<b>Secondary Gateways</b>					
<b>Is redundant VPN needed?</b>		No			
<b>Secondary Gateway</b>					
<b>Gateway</b>		<b>External IP Address (Routable, No NAT)</b>		<b>Make and Model</b>	
Secondary DHL Gateway					
Secondary Remote Gateway		72.67.208.180		Cisco 2911	
<b>Encryption Domain</b>					
<b>Remote IP Address/Network</b>			<b>DHL IP Address/Network</b>		
10.1.0.0/16					
<b>IKE</b>					
<b>IKE Phase I - II</b>					
<b>IKE Phase</b>	<b>Encryption Algorithm</b>	<b>Hash Algorithm</b>	<b>PFS Diffie Hellman Group</b>	<b>Lifetime</b>	
Phase 1	AES 256 - Recommended by DHL	SHA-1 - Recommended by DHL	2 - Recommended by DHL	Other - 28800	
Phase 2	AES 256 - Recommended by DHL	SHA-1 - Recommended by DHL	2 - Recommended by DHL	3600s - Recommended by DHL	
<b>NAT Rules</b>					
<b>NAT Rules</b>					
<b>Customer IP</b>		<b>Customer Translated IP</b>			
Not specified					
<b>Segmentation Firewall</b>					
<b>Are the DHL servers behind a firewall on the internal network?</b>		No			
<b>Firewall Hostname</b>					
<b>Access Control</b>					
<b>Access Control</b>					
<b>Source - Destination</b>					
<b>Id</b>	<b>Source IP Address / Host Name</b>	<b>Source Translated IP</b>	<b>Destination IP Address / Host Name</b>	<b>Destination Translated IP</b>	<b>Protocol</b>
2	1. 7.250.77.160/29 -		1. 2.31.40.73 - 2. 2.31.40.79 - 3. 2.31.40.81 - 4. 2.31.40.67 - 5. 198.141.83.91 - 6. 198.141.83.92 - 7. 198.141.83.93 - 8. 198.141.83.94 - 9. 198.141.83.95 - 10. 198.141.83.96 - 11. 198.141.83.97 - 12. 198.141.83.98 -	1. 199.41.3.140 2. 199.41.3.141 3. 199.41.3.142 4. 199.41.3.143 5. 199.41.3.144 6. 199.41.3.145 7. 199.41.3.146 8. 199.41.3.147 9. 199.41.3.148 10. 199.41.3.149 11.	1. JetDirect,TCP,9100 2. LPD,TCP,515 3. IPP,TCP,631

Id	Source IP Address / Host Name	Source Translated IP	Destination IP Address / Host Name	Destination Translated IP	Protocol
			13. 10.162.18.55 - 14. 10.162.18.56 - 15. 10.162.18.57 - 16. 10.162.18.58 - 17. 10.162.18.53 - 18. 10.162.18.67 - 19. 10.162.18.68 - 20. 10.162.18.69 - 21. 198.141.83.77 - 22. 198.141.83.85 - 23. 198.141.83.86 - 24. 10.162.18.71 -	199.41.3.150 12. 199.41.3.151 13. 199.41.3.152 14. 199.41.3.153 15. 199.41.3.154 16. 199.41.3.155 17. 199.41.3.156 18. 199.41.3.157 19. 199.41.3.158 20. 199.41.3.159 21. 199.41.3.160 22. 199.41.3.161 23. 199.41.3.162 24. 199.41.3.163	

**CMDB**

Id	CMDB Service Name	CMDB Service Owner
2		

**Notes**

Id	Notes
2	

**Related requests**

Related Requests	
Id	Name
Not specified	